IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMARY SUIT NO.57 OF 1987

Naresh Lakhmichand Asrani ..Plaintiff.

Vs.

M/s. Kaydee Conduit Pipes & Others ..Defendants.

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Ms. Kavita A. Shah i/b A.G. Shah for the Plaintiff.
None for the Defendants.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

19th November, 2007.

P.C. :

1. The Suit has been instituted for the recovery of an amount of Rs.1,06,900/- with further interest on the principal sum of Rs.1 lac at the rate of 18% p.a. from the date of the suit until payment or realisation. The original Plaintiff carried on business in the name and style of M/s. Ramchand Company as the sole proprietor. One Kapildev Agarwal was prior to his death on 8th August, 1985 carrying on business in the name and style of M/s.Kaydee Rolling Mills and M/s. New Palghar Industries as the sole proprietor. The Second, Third and Fourth Defendants are respectively the widow and daughters of the deceased. They have been sued as legal representatives and on the basis that they

would be liable to the extent of the estate of the deceased falling into their hands. The Second Defendant is also stated to be the sole proprietor of the First Defendant.

2. On 24th May, 1985 New Palghar Industries drew in favour of M/s. Ramchand Company a Bill of Exchange in the amount of Rs.50,000/- for a valuable consideration. Under the Bill of Exchange the drawer ordered the First Defendant to pay the Original Plaintiff on demand the amount due thereunder. The Bill of Exchange was accepted. The Bill was presented for payment but is stated to have been dishonoured. The drawer is stated to have paid interest on the sum of Rs.50,000/- at the rate of 1.70% per month for a period of 180 days.

3. On 7th June, 1985, the deceased as the sole proprietor of Kaydee Rolling Mills drew in favour of M/s. Ramchand Company a Bill of Exchange in the amount of Rs.50,000/- ordering the First Defendant to pay the drawee the amount thereunder 90 days after date. The Original Plaintiff presented the Bill of Exchange to the First Defendant for acceptance and the Bill was duly accepted. Upon maturity, the Bill of Exchange was presented for payment but

was not honoured.

4. Notices were addressed on 17th October, 1985 and 15th January, 1986 pertaining to the said two bills. Eventually, a suit has been instituted for the recovery of the amounts due and payable by the First Respondent as acceptor under the Bills of Exchange dated 24th May, 1985 and 7th June, 1985. A written statement has been filed by the Second, Third and Fourth Defendants. Prior thereto by an order dated 20th April, 1987 leave was granted under the provisions of Order 37 of the Code of Civil Procedure, 1908 to defend the suit subject to the First and Second Defendants depositing an amount of Rs.30,000/- with the Prothonotary and Senior Master. The following issues were framed in the suit :

"1. Whether the Plaintiff proves that on 24.5.1985, New Palghar Industries drew a Bill of Exchange for the valuable consideration of Rs.50,000/- and accepted by the Defendant No.1 in favour of the Original Plaintiff?

2. Whether the Plaintiff proves that on 7.6.1985, M/s. Kaydee Rolling Mills drew a Bill of Exchange for the valuable consideration of Rs.50,000/- and accepted by the Defendant No.1 in favour of the Original Plaintiff?

3. Whether the Defendant Nos.2, 3 and 4 prove that the Original Plaintiff was a money lender?

4. Whether the Defendant Nos.2, 3 and 4 prove that one Mr. Ramesh Desai is the Assignee under the M. O. U. dated 2.2. 1986 and has agreed to discharge liabilities of Defendant No.1 and Palghar Industries as specifically stated in paragraph Nos. 15, 16 and 17 of their written statement?

5. What relief and decree?"

5. The Defendants hare remained absent at the hearing of the suit.

6. In support of the claim in the suit the Plaintiff has filed two affidavits in lieu of the examination-in-chief. The first affidavit dated 27th April, 2007 is of the finance broker who arranged the transaction while the second affidavit dated 30th April, 2007 is of the legal heir of the Plaintiff who has been brought on the record after the death of the Plaintiff during the pendency of these proceedings. A compilation of the original documents has been filed. The Bills of Exchange bear the signature of the Second Defendant in token of the acceptance thereof. A bank certificate dated 22nd March, 1995 issued by the Bank of Baroda has also been relied upon to establish that the Bills of Exchange were drawn and accepted for valuable consideration as against payments of Rs.50,000/- each made on 24th May, 1985 and 7th June, 1985

favouring the New Palghar Industries and Kaydee Rolling Mills.

7. In view of the evidence of the finance broker, Girdharilal Lakhi and the evidence of the Plaintiff which has gone unchallenged, the first and second issues would have to be answered in the affirmative. The burden of establishing that the Original Plaintiff was a money lender was upon the Defendants. No evidence has been led by the Defendants. The third issue is accordingly answered in the negative.

8. Similarly insofar as the fourth issue is concerned, the defence in the written statement is that a Memorandum of Understanding was entered into on 2nd February, 1986 between the First Defendant and one Ramesh Desai by which the business of the two firms was assigned by the First Defendant with all the assets and liabilities to the assignee. The Defendants have failed to lead any evidence whatsoever to substantiate that defence. In any event, the Plaintiff is not a party to the transaction if any between the First Defendant and the assignee. The fourth issue would therefore have to be answered in the negative. The Second Defendant has been sued as the acceptor of the Bills of

Exchange. The Second, Third and Fourth Defendants have also been sued as heirs and legal representatives of the drawer of the Bills of Exchange. Insofar as the Third and Fourth Defendants are concerned, the case of the Plaintiff is that they would be liable only to the extent of the estate of the deceased coming to their hands.

9. For the reasons afore stated, the claim of the Plaintiff has been duly proved. There shall accordingly be a decree as against the Defendants as prayed, subject to the clarification that the Third and Fourth Defendants shall be ordered and decreed to pay the decretal amount to the extent of the estate of the deceased Kapildev Agarwal coming to their hands.